The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOACHIM KOFAHL

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Appeal No. 1999-2114
Application 08/821,711

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ON BRIEF

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Before CALVERT, FRANKFORT and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 13-21, the only claims remaining in

the application. Claims 1-12 have been canceled in preliminary amendments prior to examination.

Appellant's invention relates to a method for forming building blocks. Independent claims 13 and 20 are representative of the subject matter on appeal and a copy of those claims, as they appear in the Appendix to appellant's brief (Paper No. 22), are reproduced below.

13. A method for compressing particulate material comprising:

delivering particulate material through an upper opening into a compression chamber;

closing a gate over the upper opening;

applying sufficient force to the particulate material to compress the material into a block within the compression chamber; and

while maintaining the force against the particulate material, sliding the gate across an upper surface of the block to smooth said upper surface.

20. A method for compressing particulate soil/cement mixture into a block comprising:

delivering particulate material through an upper opening into a compression chamber;

closing a gate over the upper opening;

applying sufficient force to the particulate material to compress the material into a block within the compression chamber; and

sliding the gate across an upper surface of the block at a rate of about 0.1 to 1.0 meter per second to smooth said upper surface.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Stout	1,822,939	Sept. 15, 1931
British Patent Specification (BPS '215)	1 367 215	Sept. 18, 1974

Claims 13-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by BPS '215.

Claims 13-16, 20 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over BPS '215.

Claims 17-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over BPS '215 in view of Stout.

Rather than reiterate the details of these rejections and the conflicting viewpoints advanced by the examiner and the appellant regarding the rejections, we refer to the examiner's answer (Paper No. 23, mailed December 3, 1998) and to appellant's brief (Paper No. 22, filed June 19, 1998) and reply brief (Paper No. 24, filed February 1, 1999) for a full disclosure thereof.

OPINION

After careful consideration of appellant's specification and claims, the teachings of the applied references and each of the arguments and comments advanced by appellant and the examiner, we have reached the conclusions which follow.

Appellant argues claims 13 and 21 together and claims 16 and 20 together, although they do not stand and fall

together. However, claims 13 and 20 are independent claims, wherein claim 16 depends from 13 and claim 21 depends from 20. For simplicity, we will discuss the rejections with respect to independent claims 13 and 20 and then discuss the issues pertaining to the rejected dependent claims therefrom. As indicated on page 3 of appellant's brief, dependent claims 14, 15, 17, 18 and 19 will stand and fall with claim 13.

Turning first to the examiner's rejection of claim 13 under 35 U.S.C. § 102(b) as being anticipated by BPS '215. Appellant has presented arguments on pages 4 through 6 of the brief and pages 1 and 2 of the reply brief which we find persuasive.

Claim 13 requires that "the force" against the particulate material be maintained while the gate is slid across the upper surface of the block. This "force" refers back to the "sufficient force" applied to compress the material into a block. The British reference teaches that a precompression of a blank is first performed between upper

plunger 4 and lower plunger 3 then the upper plunger is moved such that a cover plate (i.e., gate) 7 may be moved over the mold opening and "supported by the upper plunger, cooperating with the lower plunger to effect further compression of the blank . . . ." (British reference, page 1, lines 63-66).

The examiner has attempted to demonstrate that the required method step of "maintaining the force against the particular material, [while] sliding the gate across an upper surface of the block" is found in BPS '215 by a) equating the location of the plunger 3 in Figure 1 to its location in Figure 2 and b) analyzing the location of the arrow, which shows movement of gate 7, in Figure 1 as compared to Figure 2. The examiner contends that since

> [f]irst, the upper, compressive surface of the lower plunger (3) is at the same distance (approx. 1.9 cm) from the lower, compressive surface of the upper plunger (4) in Figure 1
>
> as it is from the lower, compressive surface of the plate (7) in Figure 2 of the reference, which clearly indicates that the lower plunger is at its compressive extended position in both figures of the

> reference. Second, and more importantly, there exists an arrow at the right end of plate (7) in Figure 2, which indicates that the plate is moving to the right, across the upper surface of the molded article . . . . The placement of the arrow in Figure 2 of the reference . . . is in contrast to the placement of the arrow in Figure 1 of the reference . . . . The positioning of the arrow in the drawings is clearly intended to demonstrate that the plate (7) of Figure 1 is movable (but stationary during the step illustrated by Figure 1-as evidenced by the arrow being spaced from the plate) to the left from its position as illustrated in Figure 1, while the plate of Figure 2 is actively moving to the right across the top of the . . . block . . . (as evidenced by the arrow touching the plate, the plate being off-center to the right, relative to the compression chamber . . . . (Answer, pages 5 and 6).

However, we cannot find any indication in BPS '215 that the drawings are drawn to scale or any description of the dimensional arrangements between the lower plunger 3, upper plunger 4 and gate 7. "[A]rguments based on measurement of a drawing are of little value" absent written description in the specification, of quantitative values. In re Wright, 569 F.2d 1124, 1127,

193 USPQ 332, 335 (CCPA 1977). See also In re Chitayat, 408 F.2d

475, 478, 161 USPQ 224, 226 (CCPA 1969) (the court held that arguments based on mere measurements in drawings are of little value without the relative dimensions set forth in the specification) and In re Wilson, 312 F.2d 449, 454, 136 USPQ 188, 192 (CCPA 1963) (the court held that patent drawings are not working drawings). Moreover, page 2, lines 11-17, of BPS '215 indicate that "[a]fter final compression, the cover plate 7 and the upper plunger 4 are moved to positions which permit the finish-pressed blank 1 to be ejected from the mould 2 by further upward movement of the lower plunger 3 . . . ." (emphasis added). There is no indication in BPS '215 that the cover plate is moved during completion of final compression or while the full force necessary for compression is maintained against the particulate material. Like appellant, we consider the examiner's position that BPS '215 shows a clear teaching, as evidenced by Figures 1 and 2, of sliding movement of gate 7 while the force is exerted by lower plunger 3 against the

blank 1 to be speculative and unsupported. Accordingly, we will not sustain the examiner's rejection of claim 13 under 35 U.S.C. § 102(b) based on BPS '215.

Appellant indicates on page 3 of the brief that claims 14, 15, 17, 18 and 19 stand or fall with claim 13.

Therefore, the rejection of dependent claims 14 and 15 under 35 U.S.C. § 103 based on BPS '215 and dependent claims 17, 18 and 19 under 35 U.S.C. § 103 based on BPS '215 in view of Stout are also not sustained. With regard to claims 17-19, we have reviewed the teachings of Stout, but find nothing therein that provides response for the deficiency noted above in BPS '215.

Turning now to the examiner's prior art rejection of claim 20 under 35 U.S.C. § 103 as being unpatentable solely over BPS '215, appellant argues that BPS '215 fails to "teach or make obvious any particular rate of movement for its plate 7," (brief, page 6) that the examiner's position provides "no factual basis" (brief, page 6) on which to reject the claims,

and that the examiner's position is "a conclusion rather than a reason and is therefore unsupportable" (brief, page 6).

We share the examiner's view that it would have been obvious to one of ordinary skill in the art to slide the gate 7 at a rate of 0.1 to 1.0 meter per second for the reason of optimizing the sliding rate to operate at any industry or commercially feasible rate. It is clear that the gate 7 in BPS '215 must be moved in order to eject the finished-pressed blank from
the mold. The rate of movement of the gate is solely up to the user. Although appellant has indicated that the "faster the speed of opening of the gate 28, the smoother will be the edges of the upper end of the finished block" (specification, page 6), appellant has not disclosed that the particular rate disclosed is critical. Furthermore, disclosure of such a broad rate of movement is evidence that the rate is not critical and any rate within the range could be used to move the gate. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d

1934, 1936 (Fed. Cir. 1990). Accordingly, the rejection of appellant's claim 20 under 35 U.S.C. § 103 is sustained.

Of the claims dependent from claim 13, only claim 16 has been argued separately. However, since BPS '215 fails to disclose the required teaching of sliding the gate across the upper surface of the block while maintaining the required force against the material, as set forth in independent claim 13, it follows that the examiner's rejection of dependent claim 16 cannot be affirmed based on BPS '215 alone.

With respect to claim 21, which is dependent from claim 20 and was argued together with claim 13, we sustain the rejection under 35 U.S.C. § 103. Independent claim 20 differs from independent claim 13 in that it does not indicate that the sliding of the gate across the upper surface of the blank takes place while a force sufficient to compress the particulate material into a block is maintained against the

material in the mold. Like claim 20, claim 21 does not require that the same force be maintained during the sliding movement of the gate as was applied to compress the material into a block. Claim 21 only refers to "a force." It is our opinion that this limitation is met by the force from the weight of the gate 7 or the force from the lower plunger 3 being exerted on the material to hold it in position. Accordingly, we will sustain this rejection.

As is apparent from the foregoing, the examiner's rejection of claims 13-15 under 35 U.S.C. § 102(b) as being anticipated by BPS '215, of claims 13-16 under 35 U.S.C. § 103 based on BPS '215 and of claims 17-19 under 35 U.S.C. § 103 based on BPS '215 in view of Stout are reversed. The examiner's rejection of claims 20 and 21 under 35 U.S.C. § 103 based solely on BPS '215 is sustained. Accordingly, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IAN A CALVERT Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

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